

**2025:HHC:40731**

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**Cr.WP No. 23 of 2025**

***Date of decision: 27.11.2025.***

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Suresh Kumar .....Petitioner

Versus

State of HP & others ...Respondents

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*Coram:*

**The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.**  
**The Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge.**

*Whether approved for reporting?<sup>1</sup>*

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For the Petitioner: Mr. Pranav Sharma, Advocate.

For the Respondents: Mr. Sidharth Jalta, Deputy  
Advocate General.

S.I. Ramesh Chand, P.S. Kala Amb  
and H.C. Balbir Singh No. 351,  
Assistant Reader to the  
Superintendent of Police, Sirmour  
are present in person.

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**G.S. Sandhawalia, Chief Justice (Oral)**

The petitioner challenges the order dated  
15.09.2025 (Annexure P-3) passed by respondent No. 1,  
wherein the detention order of the petitioner had been

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<sup>1</sup> *Whether the reporters of Local Papers may be allowed to see the judgment?*

extended for a further period of three months on the basis of the advice of the Advisory Board.

2. The petitioner had primarily challenged the said detention order on the ground that his detention under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short the 'PIT NDPS Act') was on the basis of involvement in two cases, i.e. FIR No. 117 of 2023, dated 30.07.2023 and FIR No. 109/2014, dated 25.07.2024, both registered against him in Police Station Kala Amb under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), in which the recovery was stated to be of 31 grams and 11 grams of heroin, respectively.

3. In pursuance to the order dated 21.11.2025, learned counsel for the petitioner has filed affidavit dated 25.11.2025, wherein it has been mentioned that there were total 10 cases registered against the petitioner, out of which, he has been acquitted in six cases and remaining two cases i.e. FIR No. 117 of 2023,

dated 30.07.202, and FIR No. 109/2014, dated 25.07.2024, both registered in Police Station Kala Amb under the NDPS Act are pending against him and other two cases, i.e. FIR No. 211/2025, dated 12.05.2025, Police Station Panchkula and FIR No. 157/2025, dated 16.05.2025, Police Station Naraingarh, both registered under the Arms Act, are pending against him. The details of the said cases are as under:-

| No  | FIR      | Police Station | Dated      | Under Section                      | Status         |
|-----|----------|----------------|------------|------------------------------------|----------------|
| 1.  | 20/2009  | Kala-Amb       | 12.02.2009 | 341,147,149 IPC                    | Acquitted      |
| 2.  | 207/2011 | Nahan          | 12.02.2011 | 452,307,34 IPC                     | Acquitted      |
| 3.  | 31/2014  | Kala-Amb       | 21.04.2024 | 325, 323 IPC                       | Acquitted      |
| 4.  | 81/2015  | Kala-Amb       | 08.10.2025 | 147,149,323, 506 IPC               | Acquitted      |
| 5.  | 195/2011 | Paonta Sahib   | 22.06.2011 | 307,34 IPC r/w 25, 54, 59 Arms Act | Acquitted      |
| 6.  | 93/2011  | Dharampur      | 15.06.2011 | 379, 34 IPC                        | Acquitted      |
| 7.  | 117/2023 | Kala-Amb       | 30.07.2023 | 21,29 NDPS                         | Trial pending  |
| 8.  | 109/2024 | Kala-Amb       | 25.07.2024 | 21,29, NDPS                        | Trial Pending  |
| 9.  | 211/2025 | Panchkula      | 12.05.2025 | 25(1)(B) Arms Act                  | Trial pending  |
| 10. | 157/2025 | Naraingarh     | 16.05.2025 | 25(1)(B)(a), 29-54-59 Arms Act     | Trial Pending. |

4. The argument raised by the learned Counsel for the petitioner is four fold. Firstly, it is argued that the initial proposal for preventive detention of the petitioner was made under Section 3(1) of the PIT NDPS Act by the Superintendent of Police to the Secretary (Home) to the Government of Himachal Pradesh on 08.03.2025 (Annexure P-1), in which there was a reference of recovery of 33 grams of heroin and 15 bottles of corex in both the FIRs, i.e. FIR No. 117/2023 and FIR No. 109/2024, whereas the corex was never recovered. The detention order dated 06.06.2025 (Annexure P-2) was passed only after three months after the recommendation and he stresses as such on the lack of emergency as such to detain the petitioner, who was detained only after a period of three months

5. The second argument raised is that the wife of the petitioner was also detained vide similar order dated 16.06.2025 being involved in the said two FIRs,

but order of extension of her detention was not passed, being similarly situated.

6. The third argument is that an impression was given to the Advisory Board that there were other matters pending against the petitioner under the Indian Penal Code, which led to the opinion by the Advisory Board for his further detention on account of the criminal antecedents as such. It is thus submitted that it would mitigate against the basic provisions of Section 3 of the PIT NDPS Act, which talks only about the offences under the NDPS Act and not about the offences under the Indian Penal Code.

7. The fourth argument is that a representation dated 15.09.2025 (Annexure P-4) was given by the wife of the petitioner for release/revocation of illegal detention of her husband under the PIT NDPS Act, mentioning therein that the grounds of detention had not been properly furnished and the extension appeared to be mechanical without independent

application of mind, but the said representation was never decided by the competent Authority.

8. Learned Counsel for the State, on the other hand, stresses that the detention orders are justified keeping in view the background as such of the petitioner and the involvement of the petitioner in two cases under the NDPS Act, over a period of span of one year. It has been admitted that representation given by the wife of the petitioner dated 15.09.2025 (Annexure P-4) was received, in which it was mentioned that the grounds of detention had not been properly furnished. He further submits that the said representation was duly considered and rejected by the competent Authority.

9. No order as such rejecting the said representation has been placed on record. Thus, it can be presumed that no consideration as such was done on the said representation.

10. We have gone through the proceedings of the Advisory Board, which would go on to show that

apparently there is a mention of recovery of 15 bottles of corex in FIR No. 117 of 2023, but this specific argument as such raised, has not been denied that corex was never part of the recovery. It would also be clear from the detention order of the wife of the petitioner who is the co-accused that there is only reference of recovery of 31 and 11 grams of heroin in both the FIRs, and there is no mention of recovery of corex.

11. Learned Counsel for the State, on instructions from S.I. Ramesh Chand, Police Station, Kala Amb, who is also present in person, could not rebut this aspect that 15 bottles of corex initially mentioned in the recommendation order, had not been recovered as such.

12. We are informed that the wife of the petitioner had also been detained and her detention was also dealt with by the Advisory Board. Thus apparently, the Advisory Board has chosen not to extend the detention of the wife of the petitioner and

therefore, once both husband and wife are placed on similar footings, we do not find any plausible reason as to why only the husband has to be further detained, as the basis of the initial detention is common.

13. Keeping in view the fact that the wife of the petitioner was also an accused as such in both cases and in her case, there has been no extension of the detention period, we are of the considered opinion that since the accused and his wife were similarly situated, there is no valid reason as such for taking a different view by the State to recommend further detention of the petitioner merely on account of the fact that he is involved in other cases, which are not registered under the NDPS Act.

14. Perusal of Section 3(1) of the PIT NDPS Act would go on to show that the preventive detention is to be done to avoid a detenu from engaging in illicit traffic in Narcotic and Psychotropic Substances, and therefore, there is no such authority for the State as such under

the said provisions to detain a person for involvement in other offences. The said provision reads as under:-

**“3. Power to make orders detaining certain persons-(1)** *The Central Government or a State Government, or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.”*

15. The learned Counsel for the petitioner has accordingly placed reliance upon another judgment of the Apex Court in ***Rekha Vs. State of Tamil Nadu TR Sec. To Govt. & another, 2011 (4) SCR 740,*** to submit that the Apex Court has time and again held that liberty granted under Article 21 of the Constitution

of India should not be violated and such detention orders are only on the ground of mere suspicion as such and merely on the background of the large number of cases would not be justified. It is also submitted that on account of the detention, it would be prejudicial as such to the petitioner that the prosecution was still under process and the petitioner would not be in a position to interact with his lawyer. The relevant portion of the judgment reads as under:-

*“29. Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles. It follows, therefore, that if the ordinary law of the land (Indian Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal”*

30 to 34. xxxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx

35. *It must be remembered that in cases of preventive detention no offence is proved and*

*the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as a 'jurisdiction of suspicion', (Vide State of Maharashtra Vs. Bhaurao Punjabrao Gawande, (supra) - para 63). The detaining authority passes the order of detention on subjective satisfaction. Since clause (3) of Article 22 specifically excludes the applicability of clauses (1) and (2), the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however, technical, is, in our opinion, mandatory and vital."*

16. Keeping in view the above, we are of the considered opinion that the detention of the petitioner, which is up to 15.12.2025, is not sustainable for the simple reason that the reference to recovery of 15 bottles of corex had been wrongly projected before the Advisory Board and it was not brought to its notice that the detention order of the wife of the petitioner had not been proposed to be extended.

17. In such circumstances, we are of the considered opinion that the order of detention passed in pursuance to the advice rendered by the Advisory Board is not sustainable for the above reason.

18. Accordingly, the present petition is allowed and the detention order dated 15.09.2025 (Anexure P-3) is quashed.

19. The petitioner be set free, if not required in any other case.

20. Pending application(s), if any, also stands disposed of.

**(G.S. Sandhawalia)**  
**Chief Justice.**

**November 27, 2025**  
*(hemlata)*

**(Jiya Lal Bhardwaj)**  
**Judge.**

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JISHTU

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